

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BRIAN PHILLIPS,

Plaintiff,

v.

WELLS FARGO BANK, N.A. AS TRUSTEE  
FOR THE REGISTERED HOLDERS OF  
STRUCTURED ASSET SECURITIES  
CORPORATION MORTGAGE PASS-  
THROUGH CERTIFICATES, SERIES 2007-  
OSI and OCWEN LOAN SERVICING LLC,

Defendants.

Case No. 09cv1486-H (BLM)

**ORDER (1) GRANTING IN PART  
DEFENDANTS' MOTION FOR  
SANCTIONS, (2) GRANTING IN  
PART DEFENDANTS' MOTION TO  
COMPEL RULE 26 DISCLOSURES  
AND DISCOVERY RESPONSES, (3)  
DENYING DEFENDANTS' REQUEST  
FOR SANCTIONS, (4) DENYING  
DEFENDANTS' REQUEST TO  
EXTEND DISCOVERY CUT OFF AND  
RELATED TRIAL AND PRE TRIAL  
DATES AND SETTING BRIEFING  
SCHEDULE**

[ECF Nos. 78 & 85]

Currently before the Court is Defendants' November 1, 2011 Motion to Compel Plaintiff to Attend Deposition, to Provide Rule 26(a)(1)(A) Initial Disclosures and Awarding Defendants Attorneys' Fees, or in the Alternative, Shortening Time to Hear Motion for the Same (ECF No. 78-1, "Defs' Mot."), Plaintiff's Opposition to the motion (ECF No. 82, "Pl.'s Opp."), and Defendants' December 15, 2011 Motion to Compel Rule 26 Disclosures and Discovery Responses, Request for Sanctions and Request to Extend Discovery Cut Off and Related Trial and Pre Trial Dates (ECF No. 85-1, "Defs' 2<sup>nd</sup> Mot.").

For the reasons set forth below, the Court **GRANTS IN PART** Defendants' motion for sanctions (Defs' Mot.) and **GRANTS IN PART** Defendants' Motion to Compel and

1 **DENIES** Defendants' Requests for Sanctions and an Extension of Time (Defs' 2<sup>nd</sup> Mot.).

2 **I. NOVEMBER 1, 2011 MOTION FOR MONETARY SANCTIONS**

3 On November 1, 2011, Defendants filed an *ex parte* discovery motion seeking  
4 substantive discovery and monetary sanctions for Plaintiff's alleged discovery violations.  
5 Defs' Mot. On November 3, 2011, the Court granted Defendants' motion to compel  
6 discovery, including ordering Plaintiff to appear for a deposition, but requested briefing on  
7 Defendants' request for monetary sanctions. ECF No. 81. Plaintiff filed a timely Opposition  
8 on November 18, 2011. Pl.'s Opp. Having reviewed the briefing submitted, and for the  
9 reasons set forth below, Defendants' motion for sanctions is **GRANTED IN PART**.

10 **A. BACKGROUND**

11 Defendants argue that Plaintiff should be sanctioned for failing to attend his October  
12 25, 2011 deposition. Defs' Mot. In support of their request, Defendants explain that they  
13 properly noticed Plaintiff's deposition for August 31, 2011. *Id.* at 2. Defendants then  
14 accommodated Plaintiff's repeated requests to continue the deposition. ECF No. 78-2 at 12,  
15 Exh. A, Piccuta Decl. The deposition finally commenced on October 11, 2011; however,  
16 Plaintiff failed to produce the documents that Defendants requested in their Notice to  
17 Produce, and limited the deposition to four hours due to an alleged medical condition. *Id.*  
18 at 13, Exh. A, Piccuta Decl. To remedy the failure, Plaintiff agreed to appear for a second  
19 session of the deposition and offered October 25, 2011 as an acceptable date. *Id.* at 32,  
20 Exh. A, Phillips Email. Defendants accepted that date and made all of the necessary  
21 arrangements. *Id.* at 13, Exh. A, Piccuta Decl.

22 On October 24, 2011, Defendants sent Plaintiff an email because they had not  
23 received the documents that Plaintiff agreed to produce for the deposition. *Id.* Plaintiff  
24 responded by asking if the October 25, 2011 deposition could be rescheduled. *Id.*  
25 Defendants proposed three alternative dates and asked Plaintiff which he preferred. *Id.*  
26 Plaintiff did not respond. *Id.* at 14. Defendants emailed Plaintiff a second time on October  
27 24, 2011 stating that they "needed a response as to the new deposition date by 4:00 PM,  
28 otherwise [they] would assume that [Plaintiff] would attend the deposition on the 25<sup>th</sup> as

1 scheduled." Id. at 14, Exh. A, Piccuta Decl. and 35, Piccuta Email. Defendants also called  
2 Plaintiff and left him two voicemail messages with the same message. Id. at 14, Exh. A,  
3 Piccuta Decl. Plaintiff did not respond to either the email or the voicemail messages. The  
4 following morning, which was the day of the deposition, Defendants again emailed and  
5 called Plaintiff to confirm attendance. Id. Plaintiff did not respond until 10:10 a.m., ten  
6 minutes after the deposition was noticed to begin. Id. at 14, Exh. A, Piccuta Decl. and 37,  
7 Phillips Email. Plaintiff stated in an email that he would not be attending the deposition. Id.  
8 However, eight minutes later, Plaintiff served on Defendants, by email, six sets of new  
9 discovery requests. Id.

10 Plaintiff does not challenge Defendants' evidence; he merely argues that sanctions  
11 are inappropriate. Defendants provided an October 24, 2011 email in which Plaintiff writes  
12 "I'm having problems getting everything together from the bank and some of the other doc's  
13 that you needed...as well as I was just scheduled for a biopsy tomorrow...can we push it off  
14 for another week? what days are you going to be down in Carlsbad next week?" Id. at 34,  
15 Exh. A, Phillips Email. Other than relying on that email, Plaintiff merely argues that he  
16 should not be sanctioned for failing to attend the October 25, 2011 deposition because: (1)  
17 he informed Defendants that he would not be attending the deposition prior to the  
18 deposition due to "illness and/or medical procedures"; (2) Defendants will not be irreparably  
19 prejudiced if the motion to compel is denied because they could simply file a motion to  
20 extend the discovery deadline; (3) Plaintiff offered to settle the matter and Defendants  
21 turned him down immediately without presenting a counter-offer; (4) it was not obvious to  
22 Plaintiff that discovery was necessary; and (5) Plaintiff never agreed to pay Defendants' legal  
23 expenses. Pl.'s Opp. at 2-3. Plaintiff further argues that the motion to compel was  
24 unwarranted because Plaintiff told Defendants that he would "continue to provide documents  
25 as he was able to locate them in his storage unit." Id. at 2.

## 26 **B. LEGAL STANDARD**

27 The Federal Rules of Civil Procedure state that a court may impose sanctions if "a  
28 party [...] fails, after being served with proper notice, to appear for that person's

1 deposition[.]” Fed. R. Civ. P. 37(d)(1)(A)(i). Under Rule 37, a failure by a party to appear  
2 at their deposition will result in sanctions unless the failure “was substantially justified or  
3 other circumstances make an award of expenses unjust.” Fed. R. Civ. P. 37(d)(3).  
4 Furthermore, in the Case Management Conference Order, the Court warned the parties that  
5 failure to comply with a “discovery order of the Court may result in the sanctions provided  
6 for in Fed. R. Civ. P. 37[.]” ECF No. 64 at 6. Possible Rule 37 sanctions range from payment  
7 of expenses and attorney’s fees to dismissal of the action in whole. Fed. R. Civ. P. 37.

### 8 **C. DISCUSSION**

9 Defendants request \$3,414.00 in sanctions representing attorney’s fees, expenses and  
10 costs incurred due to Plaintiff’s failure to appear for the October 25, 2011 deposition. Defs’  
11 Mot. at 6. Defendants arrived at this number by adding together the costs incurred traveling  
12 to the deposition (\$49.50), the cost of the court reporter (\$214.50), and fourteen hours of  
13 attorney’s fees at \$225.00 per hour (\$3,150.00). Id. at 5 and ECF No. 78-2 at 39, Exh. A,  
14 Invoice. Defendants request that this amount be payable within ten calendar days from the  
15 date of the entry of the order and that Plaintiff be required to file proof of the payment with  
16 the Court. Id. at 6.

17 Plaintiff’s failure to appear at the October 25, 2011 deposition was not substantially  
18 justified. Plaintiff’s allegation that he informed Defendants that he would not be attending  
19 the deposition prior to the start of the deposition is false. While it is true that Plaintiff  
20 indicated that he needed additional time to gather the requested documents, he did so the  
21 day before the deposition and he never stated that he would not attend the deposition the  
22 next day. ECF No 78-2 at 34, Exh. A, Phillips Email. Rather, the email merely advised  
23 counsel that Plaintiff was having trouble finding all of the relevant documents and had  
24 recently scheduled a biopsy and inquired about continuing the deposition. Id. This  
25 language is not the same as telling Defendants that he would not attend the deposition  
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1 scheduled for the next day.<sup>1</sup> Moreover, Defendants provided Plaintiff with numerous  
2 opportunities to reschedule the deposition but Plaintiff ignored all of them. Id. at 14, Exh.  
3 A, Piccuta Decl. As a result, Defendants were justified in relying on their statement that “if  
4 you do not advise, we will assume we are continuing as scheduled and we will conduct the  
5 deposition tomorrow.” Id. at 35, Exh. A, Piccuta Email. An email sent at the time of the  
6 scheduled deposition does not constitute timely notice and the late notice caused  
7 Defendants to incur the associated costs of the deposition because all participants, other  
8 than Plaintiff, were present.<sup>2</sup>

9 This Court finds that Plaintiff knowingly, voluntarily and intentionally failed to appear  
10 at his properly-noticed deposition. Fed. R. Civ. P. 37(d)(1)(A)(i). The Court also finds that  
11 Plaintiff’s failure to appear was not “substantially justified” and that there are no “other  
12 circumstances” that would “make an award of expenses unjust.” Fed. R. Civ. P. 37(d)(3).  
13 Thus, sanctions against Plaintiff are appropriate and required. Defendants request \$214.50  
14 for court reporter fees incurred when Plaintiff failed to show up for his October 25, 2011  
15 deposition and \$49.50 in costs incurred by counsel traveling to the deposition. Defs’ Mot.  
16 at 5 & ECF No. 78-2 at 15, Exh. A, Piccuta Decl. The Court finds that these expenses are  
17 reasonable ones incurred as a direct result of Plaintiff’s failure to appear for his deposition.

18 Defendants also request fourteen hours of attorney’s fees at \$225.00 per hour  
19 (\$3,150.00). ECF No. 78-2 at 14, Exh. A, Piccuta Decl. The fourteen hours includes four  
20 hours preparing for and driving to and from the deposition, four hours preparing the motion  
21 to compel, and an anticipated six hours for reviewing Plaintiff’s Opposition, drafting a reply,  
22 attending and arguing the motion to compel. Id. Defendants’ requested fees are too high.  
23 While the Court acknowledges that Defendants had to prepare a written motion to compel,

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25 <sup>1</sup>There was no indication as to what time Plaintiff’s biopsy was scheduled for and there was no reason  
26 for Defendants to assume that the appointment would preclude Plaintiff from attending his previously scheduled  
27 deposition. As stated previously, Plaintiff suggested the date of October 25, 2011 for the deposition. ECF No.  
28 78-2, Exh. A at 32, Phillips Email.

<sup>2</sup>The other arguments asserted by Plaintiff (See Pl.’s Opp. at 2-3) do not warrant discussion because  
they have no relevance to Defendants’ sanction motion.

Defendants did not file a reply and the hearing was conducted during a previously scheduled Mandatory Settlement Conference. ECF No. 81. Accordingly, the Court declines to award attorneys' fees for this work. Klund v. High Tech. Solutions, Inc., 2006 WL 549385, \*8 (S.D.Cal., Feb. 27, 2006) (stating that the court has broad discretion to award reasonable expenses and attorney's fees caused by the failure to obey a court order to provide or permit discovery and citing Fed.R.Civ.P. 37(b)(2) and CvLR 83.1(a)). The Court accepts counsel's statement that he spent one hour driving from his office to the deposition and one hour returning. ECF No. 78-2 at 15, Exh. A, Piccuta Decl. Counsel does not state how long he was at the deposition site waiting for Plaintiff and creating an appropriate record so the Court finds 30 minutes to be reasonable. The Court therefore orders Plaintiff to pay Defendants **\$826.50** representing 2.5 hours of Mr. Piccuta's time at the reasonable hourly rate of \$225, Mr. Piccuta's travel costs, and the associated deposition costs. The Court declines to include time spent preparing for the deposition because that work can be used for the Court ordered deposition. Klund, 2006 WL 549385 at \*8.

Plaintiff must pay this sanction by **January 27, 2012** and must file with the Court a Notice of Payment of Sanctions by **January 31, 2012**. Failure to pay said sum may result in the imposition of additional sanctions.

## **II. DECEMBER 5, 2011 MOTION TO COMPEL, REQUEST FOR SANCTIONS AND REQUEST TO EXTEND DISCOVERY CUT OFF**

On December 5, 2011, Defendants filed a Motion to Compel Rule 26 Disclosures and Discovery Responses, Request for Sanctions and Request to Extend Discovery Cut Off and Related Trial and Pre Trial Dates on the grounds that Plaintiff had violated the Court's November 3, 2011 Order compelling discovery. Defs' 2<sup>nd</sup> Mot. The Court ordered Plaintiff to file any Opposition to Defendants' motion to compel by December 12, 2011 and Defendants to file a reply by December 16, 2011. ECF No. 84. On December 16, 2011, Plaintiff filed an untimely and illegible Opposition to Defendants' motion to compel. ECF No. 87. On December 20, 2011, this Court ordered Plaintiff's Opposition to be stricken from the docket, Plaintiff to re-file a clear and legible copy of his Opposition by December 23, 2011,

1 and Defendants to reply on or before December 30, 2011. ECF No. 88. Id. Plaintiff did not  
 2 comply with this Court's Order and failed to re-file his Opposition. Having reviewed the  
 3 briefing submitted, and for the reasons set forth below, Defendants' Motion to Compel is  
 4 **GRANTED IN PART** and Defendants' Requests for Sanctions and to Extend Discovery Cut  
 5 Off are **DENIED**.

#### 6 **A. BACKGROUND**

7 Defendants allege that Plaintiff has failed to comply with the Court's November 3,  
 8 2011 Order. Defs' 2<sup>nd</sup> Mot. On November 3, 2011, this Court ordered Plaintiff to:

9 (1) produce the call recordings set forth in Plaintiff's supplemental  
 10 discovery response, the full name and address of Plaintiff's former  
 11 neighbor "Dave", and his bank statements for 2008 showing the  
 balances for all months including his account balance on June 1, 2008,  
 June 30, 2008 and July 1, 2008 on or before November 4, 2011;

12 (2) provide initial disclosures in accordance with Rule 26(a)(1)(A-E) of  
 13 the Federal Rules of Civil Procedure on or before November 9, 2011;

14 (3) produce all documents evidencing any payments made to Ocwen or  
 15 any party under the loan or loan modifications. This would include any  
 16 payments made to BNC or any party in 2007. This would also include  
 17 any payments made pursuant to the loan modification including, but  
 18 not limited, to payments in the amount of \$2,079.18, \$2,310.20, and  
 19 \$2,310.20 made during February through July 2008, any and all  
 information regarding Plaintiff's allegations regarding any claims, any  
 and all information regarding Plaintiff's allegations regarding the  
 foreclosure sale process, and any other items discussed during  
 Plaintiff's deposition, that he agreed to produce, but are not included  
 in the above categories on or before November 16, 2011; and

20 (4) appear for his deposition on November 29, 2011 at 10:00 a.m. at  
 701 Palomar Airport Road, Suite 200, Carlsbad, California 92011.

21 ECF No. 81.

22 Defendants claim that Plaintiff has: (1) failed to provide 2008 bank statements in  
 23 accordance with the Court's order; (2) failed to provide any of the documents listed in  
 24 paragraph 3 of the Court's order; and (3) created the need for a third deposition due to his  
 25 failure to provide the required documents at the November 29, 2011 deposition. Defs' 2<sup>nd</sup>  
 26 Mot. Defendants move for another order compelling Plaintiff to produce the requested  
 27 documents and for appropriate sanctions for Plaintiff's failure to comply with the Court's  
 28 November 3, 2011 order to produce the documents. Id. at 2. In addition, Defendants ask



1 that the current discovery dates be extended for approximately 75 days. Id. Plaintiff did  
2 not respond.

### 3 **B. COMPLIANCE WITH COURT-ORDERED DISCOVERY**

4 Defendants argue that Plaintiff failed to comply with one part of paragraph one and  
5 paragraph three of this Court's order. In paragraph one, the Court required Plaintiff to  
6 produce his "bank statements for 2008 showing the balances for all months including his  
7 account balance on June 1, 2008, June 30, 2008 and July 1, 2008." ECF No. 81. In  
8 response, Plaintiff provided bank statements dated January 30, 2008 - February 27, 2008,  
9 March 28, 2008 - April 28, 2008, July 30, 2008 - August 27, 2008, and November 27, 2008 -  
10 December 29, 2008. ECF No. 85-3, Exh. A at 1-20. However, Plaintiff redacted almost all  
11 of the information set forth in each statement, with the exception of the account summary  
12 and balance listed on the first page. Id. Plaintiff also provided Defendants with the first  
13 page of the bank statements from June and July 2008.<sup>3</sup> Defs' 2<sup>nd</sup> Mot. at 2. In producing  
14 all of these statements, Plaintiff said that he was providing his Rule 26 disclosures. ECF No.  
15 85-3, Exh. C at 1, Phillips Email.

16 Defendants argue that Plaintiff is "making a mockery out of this action," "intentionally  
17 frustrating discovery," and "vindictively causing Defendants to incur thousands of dollars in  
18 litigation expenses." Defs' 2<sup>nd</sup> Mot. at 4. While the Court is sympathetic to the difficulties  
19 Defendant is experiencing in obtaining discovery, the Court does not find that Plaintiff's  
20 response is so lacking as to merit the sanctions requested by Defendant. From the evidence  
21 submitted to the Court, it appears that Plaintiff provided Defendant with all of his monthly  
22 2008 statements, except for May<sup>4</sup>, September, and October. And, while the documents are  
23 heavily redacted, they comply with this Court's order because they show Plaintiff's account  
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25 <sup>3</sup>Defendants have failed to attach these two pages to their motion. As such, the Court cannot  
26 determine if the pages show the account balances on June 1, 2008, June 30, 2008, and July 1, 2008 in  
27 accordance with the Court's November 3, 2011 order. Defendants do not provide any insight into the content  
28 of these two pages or allege that they were heavily redacted like the other statements. ECF No. 85-1.

<sup>4</sup>Unless the statement for May 2008 was combined with the statement from June 2008 that Plaintiff  
submitted to Defendants, but that Defendants did not include as a part of their motion.



1 balance at the end of each month.<sup>5</sup> In drafting its previous order, the Court used  
2 Defendants' own language to describe the category of documents to be produced.<sup>6</sup> If  
3 Defendants were seeking a detailed record of the transactions that took place each month  
4 with the account, including "information regarding the checks that were presented and paid"  
5 [Defs' 2<sup>nd</sup> Mot. at 3], they should have drafted their request more carefully. As such, Plaintiff  
6 has substantially complied with paragraph one of Defendants' request as written and  
7 ordered. However, the Court finds that Defendants' additional requests<sup>7</sup> are relevant to the  
8 claims and defenses at issue in this case.

9 In paragraph three, the Court required Plaintiff to provide Defendants with "all  
10 documents evidencing any payments made to Ocwen or any party under the loan or loan  
11 modifications," including specific payments. ECF No. 81. Defendants state that Plaintiff did  
12 not provide them with any responsive documents. Defs' 2<sup>nd</sup> Mot. at 3 and Exh. A at 2.  
13 Plaintiff did not provide any contradictory information, nor did he state whether such  
14 documents exist. While Plaintiff has not complied with paragraph three of Defendants'  
15 request and the Court's order, the Court has no information before it to determine why  
16 Plaintiff failed to produce the documents: bad faith, negligence, because no such  
17 documents exist, or some other reason.

18 Plaintiff repeatedly has told Defendants and the Court that he believes he has relevant  
19 documents in his garage or storage unit but that he has not been able to find them and will  
20 produce them when he does find them. Although this response is legally insufficient,  
21 Defendants and the Court have given Plaintiff numerous time extensions to permit him to  
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23 <sup>5</sup>This is of course assuming that the June and July statements that Plaintiff produced to Defendants  
24 show the account balances on June 1, 2008, June 30, 2008, and July 1, 2008 as ordered.

25 <sup>6</sup>The description of the requested and agreed-upon categories of documents came from an email from  
26 defense counsel to Plaintiff dated October 11, 2011. ECF No. 81 at 2 and 78-2 at 30, Exh. A.

27 <sup>7</sup> During the meet and confer process, Defendants requested the Plaintiff provide "complete statements  
28 for June and July as well as the remaining account statements for 2008." Defs' 2<sup>nd</sup> Mot. at 3. Defendants also  
asked Plaintiff to provide unredacted bank statements because the redaction makes "it impossible to determine  
the balance of the account throughout the month, information regarding the checks that were presented and  
paid, and information regarding withdrawals and deposits." Id. Plaintiff refused both requests.

1 search for and locate the responsive documents. For example, prior to issuing its order, the  
2 Court told Plaintiff that he had to search his garage and storage unit for the responsive  
3 documents and asked Plaintiff how long he needed to do so. Plaintiff said that he could do  
4 so by November 16, 2011 so that is the date that he Court used for production. ECF No.  
5 81. Plaintiff has had many months (and even years since this case was filed in 2009) to  
6 search for and locate responsive and relevant documents; he cannot continue to delay his  
7 search efforts. Accordingly, Plaintiff is warned that any documents not produced to  
8 Defendants by **January 13, 2011** may be subject to suppression such that he could not use  
9 them for trial or any other motion or hearing.

10 For the reasons set forth above, the Court orders Plaintiff to immediately search his  
11 garage and storage unit (and any other location that may contain the following documents)  
12 and then provide the following documents to Defendants by **January 13, 2012**:

13 (1) complete, **unredacted**, and **legible** bank statements for every month of 2008  
14 and

15 (2) all documents evidencing any payments made to Ocwen or any party under the  
16 loan or loan modifications. This would include any payments made to BNC or any  
17 party in 2007 and any payments made pursuant to the loan modification including,  
18 but not limited, to payments in the amount of \$2,079.18, \$2,310.20, and \$2,310.20  
19 made during February through July 2008.

20 Plaintiff also is reminded that if he has any of the following documents, he must produce  
21 them to Defendants by **January 13, 2012**:

22 (1) any and all information regarding Plaintiff's allegations regarding any claims;

23 (2) any and all information regarding Plaintiff's allegations regarding the foreclosure  
24 sale process; and

25 (3) any other items discussed during Plaintiff's deposition, that he agreed to produce,  
26 but are not included in the above categories.

27 Failure to comply with this order could result in additional sanctions, including but not limited  
28 to the suppression or limitation of evidence, the striking of pleadings or claims, or the

1 termination of this litigation. Fed. R. Civ. P. 37.

2 If Defendants want to depose Plaintiff again, Defendants must do so by **January 20,**  
 3 **2012.** Plaintiff must cooperate with Defendants in finding a date on or before January 20,  
 4 2012. If the parties are unable to agree upon a date, they must jointly telephone the Court  
 5 and the Court will choose an appropriate date for the deposition.

### 6 **C. SANCTIONS**

7 Defendants request both monetary and terminating sanctions. Defs' 2<sup>nd</sup> Mot. Rule  
 8 37 of the Federal Rules of Civil Procedure empowers this Court to issue sanctions against a  
 9 party for failing to make disclosures or cooperate in discovery. These sanctions include but  
 10 are not limited to: (1) establishing designated facts for the purposes of the action; (2)  
 11 refusing to allow the disobedient party to support or oppose designated claims or from  
 12 introducing designated matters in evidence; (3) striking pleadings or parts of pleadings until  
 13 the order is obeyed; (4) staying further proceedings until the order is obeyed; (5) dismissing  
 14 the action or proceeding in whole or in part or rendering a judgment of default against the  
 15 disobedient party; and (6) treating as contempt of court the failure to obey any order except  
 16 an order to submit to a physical or mental examination. See Fed.R.Civ.P. 37(b)(2)(A),(i-vii).  
 17 Moreover, Local Rule 83.1 provides that:

18 [f]ailure of counsel or of any party to comply with these rules . . . or with any  
 19 order of the court may be ground for imposition by the court of any and all  
 20 sanctions authorized by statute or rule or within the inherent power of the  
 21 court including, without limitation, dismissal of any actions, entry of default,  
 finding of contempt, imposition of monetary sanctions or attorneys' fees and  
 costs, and other lesser sanctions.

22 CvLR 83.1(a).

23 In addition to this rule based authority, all "federal courts are vested with inherent  
 24 powers enabling them to manage their cases and courtrooms effectively and to ensure  
 25 obedience to their orders. . . . As a function of this power, courts can dismiss cases in their  
 26 entirety, bar witnesses, award attorney's fees and assess fines." Aloe Vera of Am., Inc. v.  
 27 United States, 376 F.3d 960, 964-65 (9th Cir. 2004) (citing F.J. Hanshaw Enters., Inc. v.  
 28 Emerald River Dev., Inc., 244 F.3d 1128, 1136 (9th Cir. 2001)). Sanctions are appropriate

1 in response to "willful disobedience of a court order . . . or when the losing party has acted  
 2 in bad faith, vexatiously, wantonly, or for oppressive reasons." Fink v. Gomez, 239 F.3d 989,  
 3 991 (9th Cir. 2001). In addition to willfulness, when a court order is violated, a district court  
 4 that decides to impose sanctions must also consider the risk of prejudice to the complying  
 5 party and the availability of less drastic sanctions. See Commodity Futures Trading Comm'n  
 6 v. Noble Metals, 67 F.3d 766, 771 (9th Cir. 1995), cert. denied, 519 U.S. 815 (1996)  
 7 (referencing Adriana Int'l Corp. v. Thoeren, 913 F.2d 1406, 1412 (9th Cir. 1990), cert.  
 8 denied, 498 U.S. 1109 (1991)).

9 Dispositive sanctions such as dismissal of the complaint are "authorized only in  
 10 extreme circumstances and only where the violation is due to willfulness, bad faith, or fault  
 11 of the party." In re The Exxon Valdez, 102 F.3d 429, 432 (9th Cir. 1996) (quoting United  
 12 States v. Kahaluu Const., 857 F.2d 600, 603 (9th Cir. 1988)). "Disobedient conduct not  
 13 shown to be outside the control of the litigant is sufficient to demonstrate willfulness, bad  
 14 faith, or fault." Jorgensen v. Cassidy, 320 F.3d 906, 912 (9th Cir. 2003) (quoting Hyde &  
 15 Drath v. Baker, 24 F.3d 1162, 1166 (9th Cir. 1994)).

16 As set forth above, the Court finds that Plaintiff did not fully comply with this Court's  
 17 order. However, Plaintiff substantially complied and the Court finds that Plaintiff's conduct  
 18 does not warrant the imposition of additional monetary sanctions, or a recommendation for  
 19 terminating sanctions. Accordingly, the Court **DENIES** Defendants' Motion for Sanctions.

#### 20 **D. EXTENDING DISCOVERY AND TRIAL DATES**

21 Defendants also seek to have the currently scheduled discovery cut off date of  
 22 December 2, 2011 and related trial dates extended by seventy-five-days. In support,  
 23 Defendants states that the extension is necessary "so that Defendants may complete  
 24 discovery and file their motion for summary judgment." Defs' 2<sup>nd</sup> Mot. at 2.

25 Once a Rule 16 scheduling order is issued, dates set forth therein may be modified  
 26 only "for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4); see also ECF  
 27 No. 64 at 7 (stating that dates "will not be modified except for good cause shown"). The  
 28 Rule 16 good cause standard focuses on the "reasonable diligence" of the moving party.

1 Noyes v. Kelly Servs., 488 F.3d 1163, 1174 n.6 (9th Cir. 2007); Coleman v. Quaker Oats Co.,  
2 232 F.3d 1271, 1294 (9th Cir. 2000) (stating Rule 16(b) scheduling order may be modified  
3 for "good cause" based primarily on diligence of moving party). Although "the focus of the  
4 inquiry is upon the moving party's reasons for seeking modification," a court also may  
5 consider the "existence or degree of prejudice to the party Opposing the modification . . .  
6 ." Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992). However, "[i]f  
7 [the moving] party was not diligent, the inquiry should end." Id.

8 The Court does not find good cause justifying an extension of all relevant dates by  
9 seventy-five days and therefore **DENIES** Defendants' request. However, as set forth above,  
10 the Court extends the discovery deadline for the limited purpose of permitting Plaintiff to  
11 produce relevant documents by **January 13, 2012** and Defendants to depose Plaintiff by  
12 **January 20, 2012**. No other discovery may be conducted.

13 In addition, if Defendants want to file a motion for summary judgment, the motion  
14 must be filed by **February 3, 2012**. If Defendants file a motion for summary judgment,  
15 Plaintiff's opposition must be filed by **February 21, 2012** and Defendants reply, if any,  
16 must be filed by **February 28, 2012**.

17 All other dates and deadlines shall remain as currently set. ECF No. 64.

18 **IT IS SO ORDERED.**

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20 DATED: January 6, 2012

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22 BARBARA L. MAJOR  
23 United States Magistrate Judge  
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